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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

CLEOFAS LEWIS,

Defendant and Appellant.

B239376

(Los Angeles County
Super. Ct. No. MA013598)

THE COURT:*

Defendant Cleofas Lewis appeals the trial court's denial of his petition for a writ of habeas corpus or error *corum nobis* seeking to vacate his plea of no contest to second degree robbery, his admission of two prior "strike" violations, and the 25-year-to-life term imposed pursuant to that plea and admission. Defendant contends his plea was based on representations made to him by defense counsel, the prosecutor, and the trial court that he would not be extradited to North Carolina to complete a prison term imposed on him in that state. He claims a material term of his plea agreement was violated when North Carolina authorities informed him that he would be returned to that state to serve the remainder of his North Carolina sentence after completion of his California prison term. The trial court denied defendant's petition on the grounds that it was untimely and that the record did not support defendant's assertion that the sentencing

*BOREN, P. J., DOI TODD, J., CHAVEZ, J.

judge had assured him that the North Carolina detainer would be dismissed if he agreed to a 25-year-to-life term in California.

Defendant's appointed appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), raising no issues. On May 11, 2012, we notified defendant of his counsel's brief and gave him leave to file his own brief or letter stating any ground or argument he wished to have considered. On July 13, 2012, defendant submitted a brief in which he contends he had ineffective assistance of counsel at the time his plea was entered because his counsel represented to defendant that defendant would not have to return to North Carolina to serve the remainder of a prison term in that state if he entered a guilty plea in California. Defendant further contends he had valid grounds to file a writ of error *corum nobis*.

Our independent review of the record discloses no error by the trial court in denying defendant's untimely petition, filed in November 2011, based on information he obtained in 2004 and 2005 regarding his North Carolina criminal case. We therefore affirm the judgment.

BACKGROUND

An information filed on February 16, 1999 charged defendant with second degree robbery in violation of Penal Code section 211¹ (count 1), two counts of assault with a firearm in violation of section 245, subdivision (a)(2) (counts 2 and 3), false imprisonment by violence in violation of section 236 (count 4), grand theft vehicle in violation of section 487h, subdivision (a) (count 5), two counts of first degree residential burglary in violation of section 459 (counts 6 and 7), and alleged as to counts 2, 3, and 4 that defendant personally used a firearm within the meaning of sections 12022.5, subdivisions (a) and (d) and section 1192.7, subdivision (c)(8). The information also alleged two prior convictions for attempted robbery in 1985, and one prior conviction for robbery in 1988 as prior serious felony "strike" convictions under sections 667 and 1170.12.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

At the time defendant committed the charged offenses, he had a pending indictment and a pending prison sentence in North Carolina. At the February 8, 2001 hearing at which defendant entered his plea, defense counsel told the trial court that he had been in contact with the head of the criminal warrants section of the North Carolina Attorney General's office and with the District Attorney of Robeson County, North Carolina, regarding an outstanding 13-count indictment against defendant and an uncompleted prison term in that state. Defense counsel stated that during his discussions with the North Carolina authorities, he had learned that those authorities would not prosecute the indictment against defendant, nor would they seek his return to complete the prison term, if defendant agreed to serve a 25-year prison term in California. The trial court then accepted defendant's no contest plea to count 1 and his admission to two prior "strike" violations, granted a motion by the prosecutor to dismiss the remaining counts and enhancements alleged in the information, and sentenced defendant to 25 years to life in prison.

After defendant arrived at state prison, the North Carolina Department of Correction notified the authorities at North Kern State Prison in a letter dated July 6, 2001, that it had filed a warrant and detainer seeking defendant's extradition to complete his North Carolina prison sentence. Defendant thereafter corresponded with the North Carolina authorities to obtain a removal of the detainer. In a letter dated June 7, 2004, the North Carolina prison authorities advised defendant that the detainer would remain active. The North Carolina Department of Correction reiterated its refusal to remove the detainer in subsequent letters to defendant dated July 7, 2004, June 5, 2006, June 29, 2006, October 10, 2007, March 17, 2011, March 24, 2011, and March 28, 2011.

On November 30, 2011, defendant filed a petition for writ of habeas corpus, or in the alternative, for a writ of error *corum nobis*. The trial court denied the petition on the grounds that it was untimely and that the record did not support defendant's allegation that the trial court had assured him the North Carolina detainer would be dismissed if he agreed to a 25-year-to-life term in California. This appeal followed.

DISCUSSION

Defendant contends his sentence was illegal because his defense counsel at trial, the prosecutor, and the judge represented to him that North Carolina authorities would not pursue a conviction and pending charges against him in that state if he agreed to be sentenced in California. Defendant claims he relied on those representations as a condition to entering his no contest plea. Defendant further contends his trial counsel's misrepresentations concerning the North Carolina cases against him constituted ineffective assistance of counsel prior to and during the negotiation of his plea.

Defendant's ineffective assistance of counsel claim is not cognizable in this appeal. A defendant may not appeal from a judgment of conviction upon a plea of guilty or no contest unless the trial court has executed and filed a certificate of probable cause. (§ 1237.5; Cal. Rules of Court, rule 8.304(b).) Defendant's failure to obtain a certificate of probable cause as to his ineffective assistance claim precludes appellate review of that claim. (*In re Chavez* (2003) 30 Cal.4th 643, 649-651.)

Defendant's illegal sentencing claim is not cognizable because it was not timely raised. Defendant received notice in June 2004 that his detainer was active, subjecting him to be returned to North Carolina. North Carolina authorities confirmed the active status of the detainer in subsequent correspondence with defendant in 2004, 2005, 2006, and 2007; however, defendant did not file his petition for writ of habeas corpus or error *corum nobis* until November 2011. "It has long been required that a petitioner explain and justify any significant delay in seeking habeas corpus relief. '[I]t is the practice of this court to require that one who belatedly presents a collateral attack such as this explain the delay in raising the question.' [Citation.] . . . The burden is one placed even on indigent petitioners appearing in propria persona, and is not met by an assertion of counsel that he or she did not represent the petitioner earlier." (*In re Clark* (1993) 5 Cal.4th 750, 765, fn. omitted.) Moreover, the record does not support defendant's assertion that the prosecutor and the trial court had represented to him that the North Carolina detainer would be dismissed if defendant entered a no contest plea to the California charges alleged against him.

We have examined the entire record, including defendant's brief, and conclude that no arguable issue exists. Defendant has, by virtue of his appellate counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

The judgment is affirmed.